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DATE: August 22, 2005

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TO:

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Examiner Thiem D. Phan

703--872-9306

COMMENTS:

FROM: Peter K. Sommer	EQUITRAC INIT: PKS2	EXT.: 8345
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No.: 10/667,014

Confirmation No. 9128

Applicant: John M. Calico

Filed: September 17, 2003

Title: STATOR FOR AN ELECTRIC DEVICE

TC/A.U. 3729

Examiner: Thiem D. Phan

Docket No.: MP-349

Cust. No.: 01342

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

**RECORDAL OF
SUBSTANCE OF INTERVIEW**

Sir:

The purpose of this paper is to record the substance of a telephonic interview between Examiner Phan and the undersigned that occurred on August 10, 2005.

Upon receipt of the Office Action of August 3, 2005, the undersigned began to consider Applicant's options. It did not appear to be possible to file a Request for Continuing Examination (RCE) in this case because of the following statement in MPEP § 706.07(h):

"Applicants cannot file an RCE to obtain continued examination on the basis of claims that are independent and distinct from the claims previously claimed and examined as a matter of right (i.e., applicant cannot switch inventions.) See 37 CFR 1.145."

The undersigned called Examiner Phan on August 10, 2005 to discuss applicant's options. It appeared to the undersigned that applicant would have to file a divisional application to prosecute the subject matter of new claims 31-36.

Examiner Phan then called the undersigned's attention to the provisions of MPEP § 819.01, which provides in pertinent part:

"While applicant, as a matter of right may not shift from claiming one invention to claiming another, the Office is not precluded from permitting a shift. It may do so where the shift results in no additional work or expense, and particularly where the shift reduces work as by simplifying the issues."

Mr. Phan then indicated that the Office would entertain an RCE to prosecute the subject matter of new claims 31-36. At no time during the interview was the prior art discussed, or the manner by which the claims distinguished therefrom. Rather, the substance of the interview was to discuss the procedure of proceeding to have new claims 31-36 considered in an RCE vs. a divisional application.

In the recent Office Action of August 12, 2005, Mr. Phan stated:

"Per MPEP section 819.01, the examiner agrees that applicants [sic] may shift the claimed invention by cancelling the original claims 17-30 and file an RCE for new claims 31-36."

That is now being done. Applicant is filing an RCE to prosecute the subject matter of new claims 31-36, since this will reduce delay.

The foregoing is believed to accurately record the substance of the telephonic interview between Mr. Phan and the undersigned, and to satisfy applicant's duty under 37 C.F.R. § 1.33(b) to record the substance of the interview.

Respectfully submitted,

PHILLIPS LYTLE LLP

By 

Peter K. Sommer, Esq.

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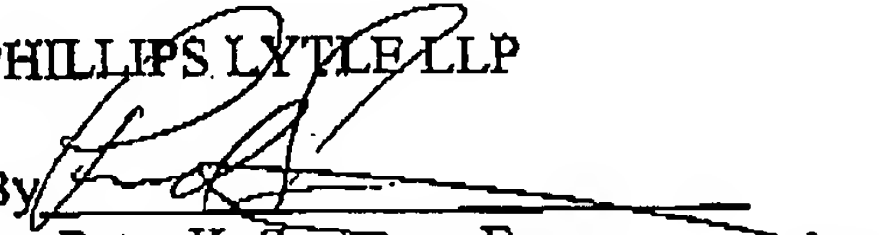
Buffalo, New York

August 22, 2005

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PHILLIPS LYTLE LLP

By 

Peter K. Sommer, Esq. ---

Reg. No. 26,587

Signed: August 22, 2005

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